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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/453).

The Counter-Terrorism Committee has received the attached supplementary report from Sri Lanka, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 15 July 2002 from the Permanent Representative of Sri Lanka to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I forward herewith the comments of my Government in regard to your letter of 15 April 2002 (see enclosure).

If any further clarification is needed, please do not hesitate to let me know.

(*Signed*) C. **Mahendran**
Ambassador
Permanent Representative

Enclosure

Response of the Government of Sri Lanka to questions raised by the Counter-Terrorism Committee — 15 April 2002

Sub Paragraph 1 (a) :

The scope of application on the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 and the Criminal Procedure Code is territorially linked to offences committed within the territory of Sri Lanka.

However, the amendment to the term "unlawful activity" effected by Act No. 48 of 1979 envisages and encompasses activity perpetrated outside the territory of Sri Lanka for the purpose of giving effect to terrorist acts committed within the territory of Sri Lanka

The reverse position, as contemplated in the questionnaire, is not covered. However, some of the acts, in particular, financing for terrorist purposes although committed within Sri Lanka could have a transnational effect and also give rise to specific offences under the law of Sri Lanka, for instance, under the Exchange Control Act.

Since offences committed under the Exchange Control Act are deemed to be criminal offences, in such situations, the provisions of the Exchange Control Act and Provisions of the Criminal Procedure Code could be invoked for effective investigation of such offences. In particular Section 124 of the Criminal Procedure Code (see extract attached) would enable a criminal investigator to obtain magisterial orders leading to the suspension of the accounts maintained at Banks and non-Banking financial institutions and also provide for authorities of such institutions to make available to the investigators the status of such accounts and other relevant information.

Proposed law on Money Laundering:

The proposed law on Money Laundering is in the process of being finalized for presentation in Parliament.

The draft law provides for the establishment of an independent Money Laundering Authority for the implementation of anti-money laundering measures and provides a regulatory procedure for financial institutions and banks to comply with, to facilitate the detection of money laundering offences.

In addition to terrorist offences, offences relating to drugs, firearms etc. are made predicate offences for the purpose of the law. It also contains provision for identification, freezing, seizure and confiscation of assets attributable as proceeds of crime.

Proposed Laws Outlawing the Financing of Terrorism:

The Draft legislation to give effect to the Convention on the Suppression of Terrorist Financing creates the offence of financing of terrorists or terrorist organizations as envisaged in the Convention. It vests the High Court with appropriate jurisdiction in terms of the Convention and makes consequential amendments to the Extradition Law in order to conform to the extradite or prosecute regime under the Convention.

The Draft legislation also provides that for the furtherance of international cooperation in the prevention of the offences specified in the Act, the Minister may make such regulations, issue such directions, take such action as provided for by any other written law, for the purpose of preventing and countering the commission of the offence of money laundering.

In addition, the Anti-Money Laundering legislation recognizes as predicate offences, offences relating to terrorism, including those under any legislation to give effect to an international convention for the suppression of terrorism to which Sri Lanka is a State party. Investigating powers contained in the Code of Criminal Procedure could also be invoked to effectively investigate offences under the proposed laws.

Legislation to give effect to Palermo Convention on Transnational Organised Crime

Legislation is currently being prepared to deal with organized crime, inter-alia, to give effect to the legal obligations under the Palermo Convention on Transnational Organised Crime.

Offences under the Act

- The Bill seeks to create a new offence of belonging to an Organized Criminal Group. Thus, merely being a member of such a group is a punishable offence.
- The Bill also recognizes as offences certain unlawful acts (committing, attempting to commit aiding the commission, conspiring to commit and abetting the commission of, an offence specified in the schedule) or the doing of any other act, in furtherance of the general criminal activities of an organized criminal group. Thus, a member of an organized criminal group or even a person who is not a member, who does any of the above in furtherance of the general criminal activities of an organized criminal group, commits an offence. The commission of an offence by a member of such a group attracts a higher penalty than a non-member.
- Harboring, concealing, assisting persons who have committed offences under the Bill are offences. Knowledge that the person who was harbored was a member of an organized criminal group is a necessary ingredient to constitute the offence. Here too, a member of a group attracts a higher penalty than a non-member.
- Intimidating or harming any person who is investigating an offence under the Act or a witness or a person connected to these persons, is also recognized as an offence if done with the intention of obstructing the course of justice. The 'harm' could be harm to the person or to property of the person.

Forfeiture of Proceeds of Crime

Where a person is convicted of an offence under this Bill, the court is empowered to order the forfeiture of any proceeds of the crime. Similar provision is found in respect of Bribery and Corruption offences. The rights of a bona fide purchaser or other person for value, is required to be given consideration. Thus, laundering of illegally acquired proceeds of crime is sought to be prevented.

Sub-paragraph 1(b) :

Sub-paragraph (a) of regulation 6 covers the following categories

(a) Acts committed by a citizen of Sri Lanka;
(b) Acts committed by any person who is residing in Sri Lanka ; and
(c) Acts committed by Sri Lankan citizens living outside Sri Lanka.

Sub-paragraph 1(c) and (d) :

Regulation does not require the commission of a criminal act leading to conviction in order to freeze funds or other financial assets. This is only required in regulation 8 dealing with forfeiture.

Hawala transactions

Provisions required to prohibit alternative money transfer agencies are embodied under the Sections 5 and 9 of the Exchange Control Act (ECA). In terms of these provisions no person other than an Authorised Dealer shall engage in foreign currency dealings including money transfer business in Sri Lanka without specific permission from the Central Bank. Therefore, any person engaged in money transfer business without such permission commits an offence under the ECA and on conducting an inquiry by the Central Bank will be liable to a fine up to 3 times the value of the offence committed. In the alternative, any person who commits such an offence, on conviction before the High Court will be liable to imprisonment for a term up to 5 years or to both imprisonment and a fine.

A special surveillance unit has been established in the Exchange Control Department to monitor inward and outward movement of funds to and from the country. This unit places special emphasis on monitoring the funds received by all Non-Governmental organizations (NGOO) to ascertain whether they are organisaations really engaged in social, religious, charitable and cultural activities. In addition, bank accounts of the NGOO receiving funds from the countries known to have links with terrorism and narcotics are regularly monitored.

Sub paragraph 2 (a) :

Please see (1) above.

Recruitment of persons:

At present, this matter would come within the purview of Regulations under the Provisions of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979. Regulation 3 (c) makes it an offence to support a proscribed organization by way inviting or exhorting persons to be enrolled as members, contributing or collecting funds or furnishing information or securing other assistance to such proscribed organization.

Sub paragraph 2 (b) :

The operative provisions of Regulations 6 (a) of the United Nations Regulations No. 1 of 2001 would apply, inter-alia, to acts committed by citizens of Sri Lanka living outside Sri Lanka.

Sub-paragraph 2 (c) (d) and (e) :

Instances envisaged concerning the movement of foreigners to use Sri Lanka as a safe-haven have not come to the notice of the competent authorities of Sri Lanka.

Sub paragraph 2 (f) :

Time frame for effecting a request for legal assistance would depend on the complexity or otherwise of each case. However, there is an established procedure for giving effect to requests for judicial assistance, which have, in practical terms, worked effectively.

Mutual Assistance on Criminal Maters:

The Draft Legislation on Mutual Assistance in Criminal Matters has been gazetted prior to presentation in Parliament. In addition, several bilateral negotiations on Mutual Assistance are under discussion pending the enactment of the legislation.

Sub paragraph 2 (g) :

Steps taken by Sri Lanka to tighten its measures to safeguard against forgery of passports are as follows :-

1. Issue of Machine readable passports with high security features
2. Amendment of existing immigration laws to give enhanced punishments to those who are involved in tampering passports as well as to the persons who are aiding and abetting to forge Travel Documents.

Action Proposed:-

1. Data of all passports issued after August 1992 will be logged in the Central Data Base in order to check passports with altered, forged or tampered pages instantly, helping the law enforcement officials combating forgery of passports. Airport will be linked with its Immigration Head Office and the Directorate of Internal Intelligence.
2. Action will be taken to start a training center at the head Office with the modern equipment to detect forgeries with the help of International Organization for Immigration (IOM) to train Immigration officers.
3. The new "N" Series passports will be introduced in the year 2003 with several new security features.

A comprehensive Immigration Law which, inter-alia, criminalizes human smuggling and provides for enhanced penalties for forgery of passports and other travel related documents is due to be introduced shortly.

In view of the sensitive nature of the bilateral agreements, the Government of Sri Lanka regretfully wishes to refrain from furnishing further information to that contained in its initial Report

Sub Paragraph 3 (c), (d) and (e) :

Sri Lanka is not a party to the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988). These have not received priority attention since there is no immediate practical relevance of these Conventions to Sri Lanka.

All bilateral treaties on Extradition which Sri Lanka has concluded provides for extradition in respect of any offence which carries a term of imprisonment for a period of at least 1 year. This would cover all crimes under relevant International Conventions and Protocols for the suppression of terrorism, which are treated as serious crimes.

Sub paragraph 3 (g) :

Although the Conventions prior to the Terrorist Bombings Conventions do not have specific provision excluding the political offences exception, in Sri Lanka's treaty practice, it is usual to incorporate a provision treating as "non-political" for purposes of extradition, any offence under a multilateral Convention to which the Contracting Parties have subscribed and which provides for extradition or prosecution in respect of offences under such Convention.

Sub paragraph 4 :

Sri Lanka has made every effort bilaterally and multilaterally to emphasize the need for cooperation, taking into account the close connection between international terrorism and transnational organized crime etc. In a recent agreement negotiated with the European Community on the Re-Admission of Persons residing without authorization, an accompanying Joint Declaration recognizes the need to take measures against organized criminal activities such as human trafficking, migrant smuggling and financing for terrorist purposes and provides for the facilitation of cooperation between the law

criminal activities such as human trafficking, migrant smuggling and financing for terrorist purposes and provides for the facilitation of cooperation between the law enforcement, immigration and other relevant authorities of Member States of EU with their counterparts in Sri Lanka.

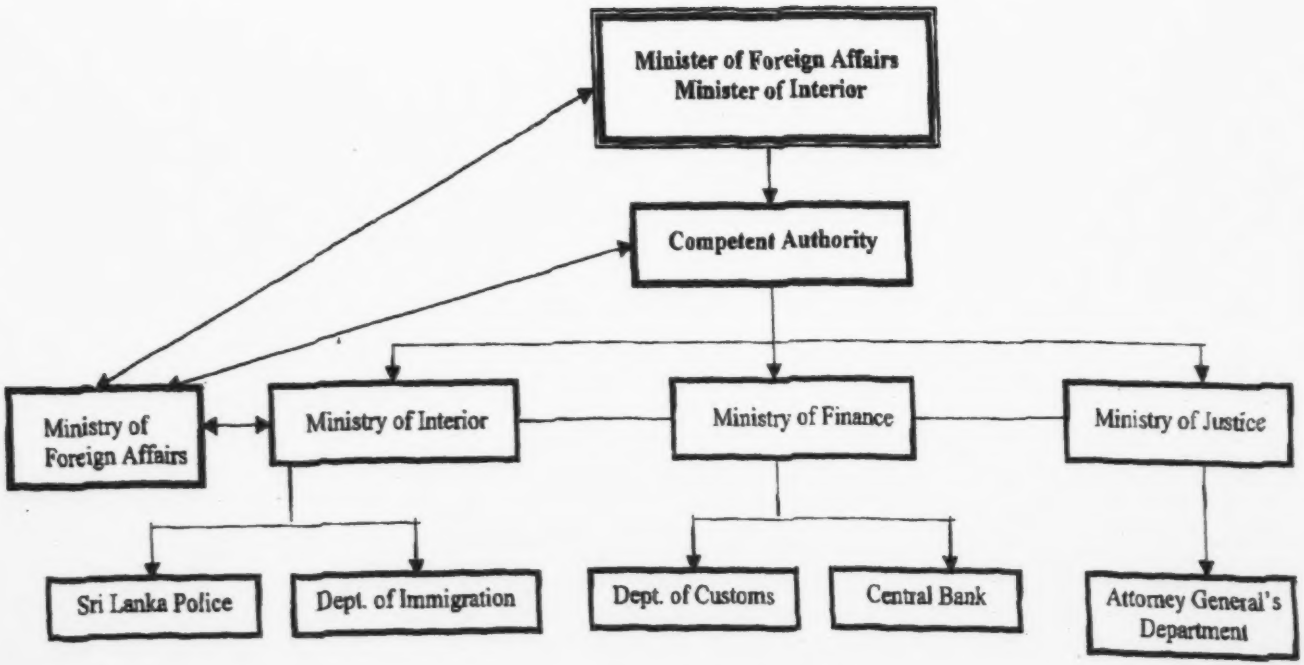
This information should be treated as confidential in view of the fact that the agreement has not yet been signed.

Other matters :

The organizational chart of Sri Lanka administrative machinery for implementation of Security Council resolution 1373 (2001) is contained in the annex to this response.

Annex

Organizational chart of Sri Lanka administrative machinery for implementation of Security Council resolution 1373 (2001)



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